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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/194,700 03/04/99 WIDLUND

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EXAMINER

KIDWELL, M

ART UNIT

PAPER NUMBER

3761
DATE MAILED:19
07/13/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/194,700

Applicant(s)

WIDLUND, URBAN

Examiner

Michele M. Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10 and 13-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments filed May 2, 2001 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Levesque discloses that the use of a liner with a hydrophilic wetting region with surrounding hydrophobic materials prevents soling of the underlying absorbent material (col. 8, lines 18 – 20) and prevent secondary "strike-through" as set forth in col. 2, lines 49 – 59.

With respect to the Applicant's argument that Levesque fails to disclose an absorbent article that includes a hydrophilic absorbent material in the wetting region, the Examiner would like to direct the Applicant to col. 7, lines 41 – 45. In this passage, Levesque discloses an article provided with a hydrophilic non-woven fabric of cellulosic fibers which would, in turn, possess absorbent properties and constitute a hydrophilic absorbent material meeting the limitations of claim 1.

Additionally, Levesque discloses numerous materials for use in comprising the liner which are both hydrophilic and absorbent as set forth in col. 3, line 58 to col. 4, line 17.

Regarding the Applicant's argument that Levesque discloses hydrophilic passages originating from a hydrophobic material that would not have an inherent absorbent ability, the Examiner would like to direct the Applicant to col. 4, line 3 – 6. Levesque discloses that the products of the present invention may be initially hydrophobic or hydrophilic. Likewise, the use of a hydrophilic material would inherently allow the material to retain a portion of the body fluid emitted on the article since the material used in the disclosure of Levesque is identical to the material of the claimed invention.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper.

See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 6, 9 and 13 – 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen (US 5,591,150), and further in view of Levesque (US 3,838,692).

As to claim 1, Olsen teaches an absorbent article (20) comprising a liquid-pervious surface layer (38), a liquid-impervious surface layer (40), and an absorbent body enclosed between the two surface layers (42) as set forth in col. 7, line 22 to col. 9, line 34. Olsen does not explicitly disclose an article which further exhibits a wetting region wherein the liquid-pervious surface layer within the wetting region is constituted of hydrophilic absorbent material and that remaining parts of the liquid-pervious surface layer are constituted of a hydrophobic material, however, Olsen does disclose that the topsheet layer may be rendered hydrophilic as set forth in col. 7, lines 52 – 54.

Further, Levesque teaches a liner to be used with an absorbent article wherein the liner comprises a liquid-pervious surface layer within the wetting region is constituted of hydrophilic absorbent material and that remaining parts of the liquid-

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pervious surface layer are constituted of a hydrophobic material as set forth in col. 8, lines 40 – 44.

It would have been obvious to one of ordinary skill in the art to modify the liner of Olsen because the use of a liner with a hydrophilic wetting region with surrounding hydrophobic materials prevents soling of the underlying absorbent material as taught by Levesque in col. 8, lines 18 – 20. Additionally, the liner would prevent “strike-through” as taught by Levesque in col. 2, lines 49 – 59.

With respect to claim 2, Olsen discloses an absorbent article wherein the article exhibits a hump, projecting from the liquid-pervious surface layer, wherein the location of the hump on the article at least partially coincides with the wetting region as set forth in figures 1, 3 and 4 and in col. 10, lines 25 – 27.

Regarding claims 3 and 4, Olsen teaches an absorbent article wherein the hydrophilic material in the liquid-pervious surface layer primarily consists of hydrophilic, absorbent fibers and/or hydrophilic, absorbent foam material as set forth in col. 16, line 50 to col. 17, line 9. Olsen teaches that the insert may be comprised of suitable blends of the types of materials described which would include foams and absorbent materials.

As to claims 5 and 6, Olsen discloses an absorbent article wherein the hydrophobic material in the liquid-pervious surface layer primarily consists of hydrophobic fibers and/or hydrophobic foam as set forth in col. 7, lines 21 – 36.

As to claim 9, Olsen discloses an absorbent article wherein the hydrophilic material in the liquid-pervious surface layer is constituted of a hydrophobic material that has been rendered hydrophilic as set forth in col. 7, lines 52 – 60.

Regarding claim 13, Olsen teaches an absorbent article wherein the article comprises a shaping member ("X" shaped flat insert) which, by means of influence from the forces which the article is subjected to during use, has the ability to bring the wetting region into contact with the mucous membranes of the user as set forth in col. 21, lines 36 – 49.

With reference to claim 14, Olsen teaches an absorbent article wherein the shaping member comprises compressions or folding notches as set forth in col. 11, lines 49 – 52.

As to claim 15, Olsen discloses an absorbent article wherein the shaping member comprises an insert as set forth in col. 21, lines 35 – 39.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen, in view of Levesque as applied to claims 1 – 6, 10 and 13 – 15 above, and further in view of Nishino et al (US 5,449,352).

As to claim 7, Olson in view of Levesque disclose an absorbent article meeting all of the limitations of the claim with the exception providing the absorbent article with a laminate of material. However, Nishino teaches an absorbent article characterized in that the liquid-pervious surface layer comprises a laminate of a first liquid-pervious, hydrophobic material layer arranged closest to the absorbent body, and a second liquid-pervious, hydrophilic material layer, of substantially the same extension as the wetting region of the article, arranged outside the first material layer and intended to bear on the body of the user in the wetting region during use as set forth in col. 6, line 63 to col. 7, line 21. It would be obvious to one of ordinary skill in the art to combine the device of

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Olsen with the invention of both Levesque and/or Nishino in order to develop a more effective absorbent article thereby reducing the opportunity for leakage.

As to claim 8, Olson in view of Levesque disclose an absorbent article meeting all of the limitations of the claim with the exception providing the absorbent article with a laminate of material further comprising an opening. However, Nishino teaches an absorbent article wherein the material is structured as claimed by the applicant and further exhibits an opening, of substantially the same extension as the wetting region of the article, through which the hydrophilic layer is exposed as set forth in col. 3, lines 22 – 29. It would be obvious to one of ordinary skill in the art to apply the concept of Nishino to the device of Olsen in view of Levesque in order to formulate an absorbent article with a higher absorbent capability.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen (US 5,591,150).

Regarding claim 10, it has already been disclosed by the invention of Olsen that the material in the in the liquid-pervious surface layer is comprised of a hydrophobic material which may be rendered hydrophilic as set forth in col. 7, lines 52 – 60. It would then be obvious to one having ordinary skill in the art that the initial hydrophobic material would provide same results as hydrophilic material that is rendered hydrophobic since the two materials are functionally equivalent.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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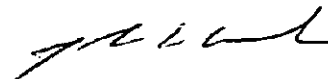
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele M. Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday thru Friday, 7:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John G. Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Monica Graves, Patent Analyst, whose telephone number is 703-305-3002.


Michele Kidwell
July 11, 2001



Attachment for PTO-948 (Rev. 03/01, or earlier)
6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.